



[3411-15-P]

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 230

RIN 0596-AD23

Community Forest Program

AGENCY: Forest Service, U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The United States Department of Agriculture has revised the final rule for the Community Forest and Open Space Program (Community Forest Program). The revisions included in this final rule will allow grant recipients to convey conservation easements to funding entities and, in some circumstances when consistent with the program's purposes, convey community forest land to other eligible entities. The final rule also clarifies the definitions of program-specific terms, streamlines the application process, and implements the Office of Management and Budgets (OMB)'s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: For more information, including a copy of the final rule, refer to the World Wide Web/Internet at: <https://www.fs.usda.gov/managing-land/private-land/community-forest>. More information may be obtained by written request to the Director, Cooperative Forestry Staff, Forest Service, USDA, Mail Stop 1123, 1400 Independence Avenue, S.W., Washington, DC 20250-1123.

FOR FURTHER INFORMATION CONTACT: Scott Stewart, Program Manager, State and Private Forestry, Cooperative Forestry Staff, (202) 205-1618. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Background

The Community Forest Program is authorized by Section 8003 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-246; 122 Stat. 2043). On October 20, 2011, the Forest Service issued regulations (36 CFR part 230, subpart A) implementing the program. After selecting and awarding the first round of grants under the current 36 CFR part 230, subpart A, the Agency identified some inconsistencies and inefficiencies in the regulation that hinders the Agency's ability to efficiently and effectively implement the program.

One of the critical inconsistencies can be found in § 230.8, which specifies the acquisition requirements for this program. Section 230.8(a)(5) lists the documents and statements that must be recorded with the deed as part of the Notice of Grant Requirement. It states that, "...the grant recipient will not convey or encumber the interest in real property, in whole or in part, to another party...". This language is more restrictive than necessary and inconsistent with the grant assurances (OPM Form 424D), which allows a grant recipient to convey or encumber the interest in real property with prior approval from the granting Agency. Furthermore, the restrictive language prevents eligible entities from using funding mechanisms that require establishment of a conservation easement, even though this arrangement could be compatible with Community Forest Program requirements. This provision also prevents the transfer of ownership interest in a Community Forest to another eligible entity if the original owner becomes unable to hold or maintain the parcel.

Additionally, the Agency seeks to reduce the burden of paperwork and information collections on applicants. Currently, the Agency requests an eight-page application, a map of the parcel in question, all forms required for issuance of a Federal grant, and a draft community forest plan. The current application process is overly burdensome, and all elements of the current process are not necessary to ensure the selection of high-quality community forest projects that meet the intent of the program.

The Agency also seeks to clarify definitions and refine provisions regarding the use of technical assistance funds. The language clarifies how technical assistance should be determined and requested. Some of the definitions in the current regulation are unclear and confuse the intent of the program. The Agency seeks to provide clarification and reduce the amount of confusion caused by the unclear definitions.

Lastly, the Agency is eliminating the separate cost share and grant requirements for non-profit organizations, Tribal governments, and local governments in (§§230.6(c) and 230.7(a)(2)). The Agency will follow the guidance outlined in the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Assurances (2 CFR part 400).

Need for the Final Rule

The Forest Service is revising this regulation to correct inconsistencies and inefficiencies, to clarify confusing language, reduce the paperwork collection burden for applicants, and to update grant requirements to comply with grant regulations and OMB circulars. These changes will help ensure that the regulations align with the intent and purposes of the authorizing legislation.

Project Compliance with the National Environmental Policy Act

Project grants are subject to the National Environmental Policy Act (NEPA) and must comply with the Agency's NEPA implementing procedures as described in 36 CFR part 220, as

well as the Council on Environmental Quality's NEPA procedures at 40 CFR parts 1500-1508. Community Forest Program grants are used to transfer title and ownership of private lands to third parties and will not fund any ground-disturbing activities. The Forest Service has concluded that Community Forest Program grants fall under the categorical exclusion provided in the Forest Service's NEPA procedures for "acquisition of land or interest in land" 36 CFR 220.6(d)(6); 73 FR 43084 (July 24, 2008). As a result, Community Forest Program project grants are excluded from documentation in an environmental assessment or impact statement.

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs

The Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 ("Uniform Act") (42 U.S.C. 4601, et. seq.) provides guidance and procedures for the acquisition of real property by the Federal Government, including relocation benefits to displaced persons. Department of Transportation regulations implementing the Uniform Act (49 CFR part 24) have been adopted by the Department of Agriculture (7 CFR part 21). However, the Community Forest Program is deemed exempt from the Uniform Act because it meets the exemption criteria stated at 49 CFR 24.101(b)(1).

Federal Appraisal Standards

Section 7A(c)(4) of the Cooperative Forestry Assistance Act (16 U.S.C. 2103d(c)(4)), requires that land acquired under Community Forest Program be appraised in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions (Federal Appraisal Standards) in order to determine the non-Federal cost share of a parcel of privately-owned forest land. The Federal Appraisal Standards are contained in a readily available public document, which is well known to professional appraisers (see: <https://www.justice.gov/file/408306/download>). A grant recipient is responsible for assuring that the appraisal of the Community Forest Program tract is done in conformance with the Federal Appraisal Standards. The Federal Appraisal Standards

shall be used to determine reimbursement for non-Federal cost share. However, separate tracts donated for the purpose of providing the non-Federal cost share may be appraised using the Uniform Standards of Professional Appraisal Practice (USPAP) or the IRS regulations for a donation in land. The Forest Service may be available to assist applicants with the appraisal and associated appraisal review and will conduct spot checks to assure compliance with Federal Appraisal Standards.

2. Formal Government-to-Government Consultation with Federally Recognized Tribes

Indian Tribes were invited to government-to-government consultation (consultation) on the CFP proposed rule prior to review and comment by the general public. The consultation process was initiated September 29, 2015. The Deputy Chief for State and Private Forestry sent a letter to the Forest Service regional leadership requesting that they initiate consultation with federally recognized Tribes. Each unit then initiated consultation with Indian Tribes, providing them with information about the CFP, the proposed rule, how to request government-to-government consultation, and where to send comments. Consultation concluded September 30, 2016. Forest Service incorporated the input received through consultation and the public comment process into the development of this final rule.

Indian Tribal Input and Agency Responses

36 CFR 230.2 - Definitions

Comment: A definition of cultural resources should be included in the regulation. A simple reference to “cultural resources” will have varying meanings to the different eligible entities involved with a Community Forest Plan. If a definition is not included, a reference to consideration of Traditional Cultural Places/Properties (TCPs) should be provided. TCPs play an important role in Tribal community traditions, beliefs and activities and thus need to be protected.

Response: The final rule includes additional language to clarify the meaning of cultural resources to include tangible and intangible resources.

Eligible Lands

Comment: Section 230.2 Definition: Expand the definition of item 2 to expressly refer to “Indian Trust Assets” (ITAs) and “non-trust Indian lands”. ITAs are defined in the implementation regulations for Public Law 93-638 as an interest in land, water, minerals, funds or other assets or property which is held by the United States in trust for an Indian Tribe or an individual Indian or which is held by an Indian Tribe or Indian subject to a restriction on alienation impacted by the United States (25 CFR 900.6). A simple reference to “lands held in trust by the United States” will have varying meanings to the different eligible entities involved in the development of a proposed Community Forest Plan.

Response: The final rule expressly refers to Indian reservations and allotment land when defining eligible and non-eligible lands. Since ITAs are defined as “...an *interest* in land, water, minerals, funds or other assets or property...” this would not be applicable in determining if the land was eligible or non-eligible for the Community Forest Program; no change made to final rule.

Comment: Provide clarity that it is the governing body of the Indian Tribe that designates or authorizes an individual to represent the Tribe.

Response: Clarifying language was added to the definition for Equivalent officials of Indian Tribes in the final rule.

3. Summary of Comments and Agency Responses to Public Comments

On December 8, 2015, the Forest Service published in the Federal Register (80 FR 76251) a proposed rule revision to allow Community Forest and Open Space Program grant recipients to issue conservation easements to funding entities, convey or encumber an interest in community forest land to other eligible entities, clarify program-specific terms, streamline the application process, and implement the Office of Management and Budget’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR parts 200 and 400).

The Forest Service solicited comments on the proposed rule for 90 days ending March 7, 2016. The Forest Service received comments from ten individuals contributing 32 total comments, overwhelmingly in favor of the rule revision, with a few suggestions for clarification and one party opposed with comments not germane to the rule. One response was from an individual member of the public, two respondents represented local municipalities, two responses were from regional coalitions, four respondents were regional representatives of national non-profit organizations, and one response was received from a Forest Service regional program manager. Responses from Indian Tribes, the agencies that work with them and government-to-government consultations were also received and analyzed separately (see Government-to-Government Consultation with Indian Tribes above and Consultation and Coordination with Indian Tribes in Regulatory Certification).

Comments on the Proposed Rule Revision 36 CFR Part 230, Subpart A

General Comments

Comments in favor: Two commenters commended the Agency on its flexibility in allowing conveyances of land holdings should the need arise.

§ 230.2 Definitions

Comments in favor: Three commenters commended the Forest Service for including the addition of “cultural resources” to the definition of “environmental benefits.” It helps promote the range of resource values that CFP is helping to protect.

Comments suggesting modifications: Two commenters requested that the Forest Service clarify the range of permissible commercial activities on a community forest. As currently read, the exception for “compatible commercial uses” is not specific beyond its description as “limited.”

Agency Response: The rule is not intended to be unnecessarily prescriptive. Future commercial uses could arise that may be reasonable, and the language as written allows for a future dialogue between a grant recipient and the Forest Service rather than excluding them prescriptively without deliberation. The Agency determined that the language as written provides reasonable guidelines for a discussion of compatible uses, so long as those uses do not conflict with the community values provided by the community forest.

§ 230.4 Application Requirements

Comments in favor: Nine commenters expressed favor that the revised rule would allow for the draft plan to be submitted only after a project has been selected and a grant awarded. This is a common-sense change that will reduce the administrative burden for CFP applicants, and will not reduce the number of high-quality project applications.

§ 230.6 Project Costs and Cost Share Requirements

Comments suggesting modifications: Requesting that the Agency provide clarity with respect to the prohibition on the use of “other Federal funds unless specifically authorized by Federal statute.” To the extent practicable, the Agency should clarify that the Gulf Coast Restoration Trust Fund and the Department of Defense Readiness and Environmental Protection Program are eligible as non-Federal cost share for the purposes of the Community Forest Program.

Agency Response: If law, or regulations promulgated to implement a law, indicate that Federal funds may be treated as non-Federal, the Community Forest Program will adhere to that direction. The Agency is not in a position to make explicit determinations on the nature of all possible funding mechanisms contributed for cost-share. Therefore, leaving the language in its current form allows program managers to follow existing law and policy while retaining the opportunity to evaluate emerging situations and opportunities.

§ 230.8 Acquisition Requirements

Comments in favor: Seven commenters in favor of the proposed revision would amend existing regulations to allow encumbrances on the land, as long as they are not contrary to the purposes of the program. This is a change from the current language, which states that grant recipients may not “encumber the interest in real property, in whole or in part, to another party.” This revision is a common-sense change that will make it easier to develop partnerships in acquiring and managing community forests and ultimately broaden participation in the program.

Comments suggesting modifications: The Forest Service should require a new Notice of Grant Requirement be recorded if an eligible transfer to another entity occurs.

Agency Response: The Forest Service agrees with this suggestion and has expanded upon the language to ensure that any new entity receiving the community forest land holdings will subsume all responsibilities required of the original grant recipient. The language has also been modified to reflect the need to document land conveyances through a new Notice of Grant Requirement.

§ 230.9 Ownership and Use Requirements

Comments suggesting modifications: Four commenters suggested the revised rule states that a community forest plan be submitted within 120 days of the acquisition and periodically updated to guide the management and use of the forest. We request that the deadline for submitting a plan be extended past the 120-day limit. We expect that in many cases, the 120 day deadline will be more than enough to gather feedback to draft a community forest plan. However, in such instances where more input is needed, an extension to the deadline would be useful in order to ensure meaningful public input.

Agency Response: The Agency maintains that the 120-day deadline should remain in order to encourage timely deliberation and efficient communication between stakeholders. In order to

provide appropriate flexibility to address unforeseen circumstances, the Forest Service has modified the rule to ensure that regional managers have the discretion to extend the planning process for an additional 60 days if there is sufficient justification for why the deadline cannot be met.

Comment: The Forest Service should provide greater clarification regarding the “periodic updating” of the plan. It should be clearer how often the plan should be updated, and what elements of the plan need updating.

Agency Response: The Agency concurs with this suggestion, and has modified the language to require periodic updating of the community forest plan in the event of new threats of encroachment, significant changes to forest health threats requiring alterations in proposed treatments, or when a significant lapse in time has occurred since the initial plan was created.

Comment: “Grant recipients” should be replaced with “Community Forest Holders/Owners”. If an allowed transfer to another eligible entity occurs, the owner of the community forest is no longer the Grant Recipient. This could make the initial grantee ineligible for future funding opportunities through the program.

Agency Response: The Agency has modified the language to clarify that if lands are conveyed voluntarily by a recipient who had adhered to the stipulations of both the grant agreement and the Agency instructions for conveyance as outlined in the rule and grant agreement, then that original grant recipient would be eligible for future program funding.

§ 230.10 Technical Assistance Funds

Comments suggesting modifications: As written, the rule requires State Foresters or equivalent officials of Indian Tribes to indicate the financial need and purpose of technical assistance in their Community Forest application. Because the application comes from the eligible entity and not the state, the commenter suggests amending the language to assert that

financial need and purpose should be indicated “in the project budget and formally requested by the State when forwarding the applications received by the applicants to the Forest Service.”

Agency Response: The Agency emphasizes coordination between the grant applicant and the State or Tribal representative to ensure that technical assistance needs are already adequately characterized in the budget. Section 230.3 clearly requires that the State Forester or equivalent official must clarify technical assistance funding needs for any services rendered upon submission of the application to the Forest Service.

Regulatory Certifications

Regulatory Planning and Review

This final rule has been reviewed under USDA procedures and Executive Order 12866. The Office of Management and Budget (OMB) has determined that this rule is non-significant for purposes of Executive Order 12866.

This final rule does not regulate the private use of land or the conduct of business. It is a grant program for local governments, Tribal governments, and qualified nonprofit organizations for purposes of acquiring land for resource conservation and open space preservation. By providing funding to eligible entities for land acquisition, the Federal Government will promote the non-monetary benefits of sustainable forest management. These benefits include: improved air and water quality, wildlife and fish habitat, forest-based educational programs including vocational education programs in forestry, replicable models of effective forest stewardship for private landowners, open space preservation, carbon sequestration, and enhanced recreational opportunities including hunting and fishing.

Proper Consideration of Small Entities

This final rule has been considered in light of Executive Order 13272 regarding property considerations of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996. Voluntary participation in the Community Forest Program does not impose significant

direct costs on small entities. This final rule imposes no additional requirements on the affected public. Entities most likely affected by this final rule are the local governments, qualified nonprofit organizations, and Tribal governments eligible to receive a grant through the Community Forest Program. The minimum requirements imposed on small entities by this final rule are necessary to protect the public interest and should be within the capabilities of small entities to perform, and should not be administratively burdensome or costly to meet. The final rule would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of program participants. It does not compel the expenditure of \$100 million or more by any State, local or Indian Tribal government, or anyone in the private sector. Under these circumstances, the Forest Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Agency has assessed the effects of this rule on State, local, and Indian Tribal governments and the private sector. This final rule does not compel the expenditure of \$100 million or more by any State, local or Indian Tribal governments, or anyone in the private sector. Therefore, a statement under section 202 of that Act is not required.

Federalism

The Forest Service has considered this final rule under the requirements of Executive Order 13132, Federalism, and Executive Order 12875, Government Partnerships. The Forest Service has determined that the rule conforms to the federalism principles set out in these Executive orders. The rule would not impose any compliance costs on the States other than those imposed by statute, and would not have substantial direct effects on the States, on the

relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Controlling Paperwork Burdens on the Public

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the Forest Service requested and received an approval of an extension without change of a currently approved information collection.

Title: Community Forest and Open Space Conservation Program.

OMB Number: 0596-0227.

Expiration Date of Approval: 12/31/2021.

Type of Request: Revision of a Currently Approved Information Collection.

Abstract: The purpose of Community Forest Program is to achieve community benefits through grants to local governments, Tribal Governments, and qualified nonprofit organizations to establish community forests by acquiring and protecting private forestlands. This rule includes information requirements necessary to implement the Community Forest Program and comply with grants regulations and OMB Circulars. The information requirements will be used to help the Forest Service:

- (1) Determine that the applicant is eligible to receive funds under the program,
- (2) Determine if the proposal meets the qualifications in the law and regulations,
- (3) Evaluate and rank the proposals based on a standard, consistent information, and
- (4) Determine if the projects costs are allowable and sufficient cost share is provided.

Local governmental entities, Tribal Governments, and qualified nonprofit organizations are the only entities eligible for the program and therefore are the only organizations from which information will be collected.

The information collection currently required for a request for proposals and grant application is approved and has been assigned the OMB Control No. 0596-0227.

Comments were sought on the information collection aspect of this rule; none were received.

Consultations and Coordination with Indian Tribal Governments

This final rule has Tribal implications as defined in Executive Order 13175. Section 7A (a) (1) of the Cooperative Forestry Assistance Act establishes that federally recognized Indian Tribes are eligible to participate in the Community Forest Program. In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); the Executive Order of November 6, 2000, "Consultation and Coordination With Indian Tribal Governments" (EO 13175); and with the directives of the Department of Agriculture (DR 1350-001); we have determined that this change will not have an adverse effect on Indian Tribes. Tribal consultation was conducted through local and regional processes in coordination with requirements set out by the USDA, Forest Service.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630 and it has been determined that the rule does not pose the risk of a taking of constitutionally protected private property. This final rule implements a program to assist eligible entities in acquiring land from willing sellers. Any land use restrictions on Community Forest Program parcels are agreed to voluntarily by program participants.

Environmental Impact

The Forest Service has determined that this final rule falls under the categorical exclusion provided in Forest Service regulations on National Environmental Policy Act procedures. Such procedures exclude from documentation in an environmental assessment or environmental

impact statement “rules, regulations, or policies to establish service wide administrative procedures, program processes, or instructions.” 36 CFR 220.6(d)(2); 73 FR 43084 (July 24, 2008). This final rule outlines the programmatic implementation of the CFP and has no direct effect on Forest Service decisions for its land management activities or on ground disturbing activities conducted by third-party entities.

Energy Effects

This final rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this final rule does not constitute a significant energy action as defined in the Executive Order.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Forest Service has not identified any State or local laws or regulations that are in conflict with this final rule or that would impede full implementation of this rule. Nevertheless, in the event that such a conflict is identified, the final rule would not preempt the State or local laws or regulations found to be in conflict. However, in that case, no retroactive effect would be given to this rule and the Forest Service would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

List of Subjects in 36 CFR Part 230

Grant programs, Grants administration, State and local governments, Tribal governments, Nonprofit organizations, Conservation, Forests and forest products, Land sales.

For the reasons set forth in the preamble, the Forest Service hereby amends part 230 of title 36 of the Code of Federal Regulations by revising subpart A to read as follows:

PART 230—STATE AND PRIVATE FORESTRY ASSISTANCE

1. The authority citation for part 230 is revised to read as follows:

Authority: 16 U.S.C. 2103(d) & 2109(e).

2. Revise subpart A to read as follows:

Subpart A—Community Forest and Open Space Conservation Program

Sec.

230.1 Purpose and scope.

230.2 Definitions.

230.3 Application process.

230.4 Application requirements.

230.5 Ranking criteria and proposal selection.

230.6 Project costs and cost share requirements.

230.7 Grant requirements.

230.8 Acquisition requirements.

230.9 Ownership and use requirements.

230.10 Technical assistance funds.

Subpart A—Community Forest and Open Space Conservation Program

§ 230.1 Purpose and scope.

(a)(1) The regulations of this subpart govern the rules and procedures for the Community Forest and Open Space Conservation Program (Community Forest Program), established under Section 7A of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103d). Under the Community Forest Program, the Secretary of Agriculture, acting through the Chief of the Forest Service, awards grants to local governments, Indian Tribes, and qualified nonprofit organizations to establish community forests for community benefits by acquiring and protecting private forestlands. This subpart is designed to allow Community Forest and Open Space Program

(Community Forest Program) grant recipients to grant conservation easements to funding entities, and, in some circumstances, to convey land to another eligible entity when consistent with the program's purposes.

(2) This subpart applies to grants awarded prior to and after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

(b) The Community Forest Program applies to eligible entities within any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the territories and possessions of the United States.

§ 230.2 Definitions.

The terms used in this subpart are defined as follows:

Borrowed funds. Funds used for the purpose of cost share which would encumber the subject property, in whole or in part, to another party.

Community benefits. One or more of the following:

(1) Economic benefits such as timber and non-timber products resulting from sustainable forest management and tourism;

(2) Environmental benefits, including clean air and water, stormwater management, wildlife habitat, and cultural resources;

(3) Benefits from forest-based experiential learning, including K–12 conservation education programs; vocational education programs in disciplines such as forestry and environmental biology; and environmental education through individual study or voluntary participation in programs offered by organizations such as 4–H, Boy or Girl Scouts, Master Gardeners, etc.;

(4) Benefits from serving as replicable models of effective forest stewardship for private landowners; and

(5) Recreational benefits such as hiking, hunting, and fishing secured with public access.

Community forest. Forest land owned in fee-simple by an eligible entity that provides public access and is managed to provide community benefits pursuant to a Community Forest Plan.

Community Forest Plan. A tract-specific plan developed with community involvement that guides the management and use of a community forest and includes the following components:

(1) A description of all purchased tracts and cost share tracts, including acreage and county location, land use, forest type, and vegetation cover;

(2) Objectives for the community forest and strategies to implement those objectives;

(3) A description of the long-term use and management of the property;

(4) Community benefits to be achieved from the establishment of the community forest;

(5) A description of ongoing activities that promote community involvement in the development and implementation of the Community Forest Plan;

(6) Plans for the utilization or demolition of existing structures and proposed needs for further improvements;

(7) A description of public access and the rationale for any limitations on public access, such as protection of cultural (including tangible and intangible resources) or natural resources or public health and safety concerns; and

(8) Maps of sufficient scale to show the location of the property in relation to roads, communities, and other improvements as well as nearby parks, refuges, or other protected lands and any additional maps required to display planned management activities.

Eligible entity. An organization that is qualified to acquire and manage land, limited to the following:

(1) *Local governmental entity.* Any municipal government, county government, or other local government body with jurisdiction over local land use decisions as defined by Federal or State law.

(2) *Indian Tribe.* Defined by Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b); includes federally recognized Indian Tribes and Alaska Native Corporations.

(3) *Qualified nonprofit organization.* As defined by the Community Forest Program authorizing statute (16 U.S.C. 2103d(a)(4)), any organization that is described in Section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)) and operates in accordance with one or more of the conservation purposes specified in Section 170(h)(4)(A) of that Code (26 U.S.C. 170(h)(4)(A)). Conservation purposes include:

(i) The preservation of land areas for outdoor recreation by, or for the education of, the general public;

(ii) The protection of a relatively natural habitat for fish, wildlife, or plants, or similar ecosystem;

(iii) The preservation of open space (including farmland and forest land) for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State, or local governmental conservation policy, where such preservation will yield a significant public benefit; or

(iv) The preservation of a historically important land area or a certified historic structure.

Eligible lands. Private forest lands that:

(1) Are threatened by conversion to nonforest uses;

(2) Are not lands held in trust by the United States, including Indian reservations and allotment land; and

(3) Can provide defined community benefits under the Community Forest Program and allow public access if acquired by an eligible entity.

Equivalent officials of Indian Tribes. Individual(s) designated and authorized by the governing body of the Indian Tribe to manage the forest proposed for acquisition.

Federal appraisal standards. The current Uniform Appraisal Standards for Federal Land Acquisitions developed by the Interagency Land Acquisition Conference (also known as the yellow book).

Fee-simple. Absolute interest in real property, versus a partial interest such as a conservation easement.

Forest lands. Lands that are at least five acres in size, suitable to sustain natural vegetation, and at least 75 percent forested. Forests are determined both by the presence of trees and the absence of incompatible nonforest uses.

Grant recipient. An eligible entity that receives a grant from the Forest Service through the Community Forest Program.

Landscape conservation initiative. A conservation or management plan or activity that identifies conservation needs and goals of a locality, state, or region. Examples of initiatives include community green infrastructure plans, a community or county land use plan, Indian Tribes' area of interest/homelands plans, a Statewide Forest Action Plan, etc. The conservation goals identified in the plan must correspond with the community and environmental benefits outlined for the Community Forest Program project.

Nonforest uses. Uses other than forest management that may be compatible or incompatible with maintaining community forest purposes.

(1) Nonforest uses that may be compatible with a community forest may include:

(i) Cultivated farmland, pasture, grassland, shrubland, open water, and wetlands; and

(ii) Low-impact structures or facilities that supports the purposes of the community forest and the Community Forest Program, such as recreational facilities, trails, concession and educational kiosks, energy development for onsite use, facilities associated with appropriate forest management, and parking areas.

(2) Incompatible nonforest uses are activities that threaten forest cover and are inconsistent with the Community Forest Plan. These uses may include, but are not limited to:

(i) Subdivision;

(ii) Residential development, except for a caretaker building;

(iii) Mining and nonrenewable resource extraction, except for activities that would not require surface disturbance of the community forest such as directional drilling for oil and gas development or onsite use of gravel from existing gravel pits;

(iv) Industrial use, including the manufacturing of products;

(v) Commercial use, except for sustainable timber or other renewable resources, and limited compatible commercial activities to support cultural, recreational and educational use of the community forest by the public; and

(vi) Structures, facilities, or organized, continuous, or recurring activities that disturb or compact the surface and/or impact forest and water resources in a manner that threatens the benefits and objectives of the community forest.

Public access. Access that is provided on a non-discriminatory basis at reasonable times and places, but may be limited to protect cultural (including tangible and intangible resources) and natural resources or public health and safety.

State Forester. The State employee who is responsible for administration and delivery of forestry assistance within a State, or equivalent official.

§ 230.3 Application process.

(a) The Forest Service will issue a national request for applications (RFA) for grants under the Community Forest Program. The RFA will be posted to <http://www.grants.gov> as well as other venues. The RFA will include the following information:

- (1) The process and timeline for submitting an application;
- (2) Application requirements (§ 230.4);
- (3) Review process and criteria that will be used by the Forest Service (§ 230.5); and
- (4) Additional information as the Forest Service determines appropriate.

(b) Pursuant to the RFA, interested eligible entities will submit an application for program participation to:

- (1) The State Forester or equivalent official, for local governments and qualified nonprofit organizations; or
- (2) The equivalent officials of the Indian Tribe, for applications submitted by an Indian Tribe.

(c) Interested eligible entities will also notify the Forest Service, pursuant to the RFA, when submitting an application to the State Forester or equivalent officials of the Indian Tribe.

(d) The State Forester or equivalent official of the Indian Tribe will forward all applications to the Forest Service and, as time and resources allow, provide a review of each application to help the Forest Service determine:

- (1) That the applicant is an eligible entity;
- (2) That the land is eligible;

(3) That the proposed project has not been submitted for funding consideration under the Forest Legacy Program; and

(4) Whether the project contributes to a landscape conservation initiative.

(e) If an applicant seeks technical assistance from the State Forester, nontribal applicants should contact the State Forester to discuss what technical assistance is needed and confirm that the State Forester is willing to provide that assistance. Tribal applicants should work with their equivalent officials (§ 230.2) to discuss and arrange similar technical assistance needs.

Applicants must include a separate budget that outlines the financial needs associated with technical assistance activities (§ 230.10).

(f) A proposed application cannot be submitted for funding consideration simultaneously for both the Community Forest Program and the Forest Service's Forest Legacy Program (16 U.S.C. 2103c).

§ 230.4 Application requirements.

(a) Documentation verifying that the applicant is an eligible entity and that the proposed acquisition is of eligible lands.

(b) Applications must include details of the property proposed for acquisition:

(1) A description of the property, including acreage and county location;

(2) A description of current land uses, including improvements and plans for utilization or demolition of existing structures;

(3) A description of forest type and vegetative cover;

(4) A map of sufficient scale to show the location of the property in relation to roads and other improvements as well as parks, refuges, or other protected lands in the vicinity;

(5) A description of applicable zoning and other land use regulations affecting the property;

(6) Relationship of the property within and its contributions to a landscape conservation initiative; and

(7) A description of any threats of conversion to nonforest uses.

(c) Information regarding the proposed establishment of a community forest, including:

(1) Objectives of the community forest;

(2) A description of the benefiting community, including demographics, and the associated benefits provided by the proposed land acquisition;

(3) A description of the community involvement to date in the planning of the community forest and of the community involvement anticipated in its long-term management;

(4) Description of the planned public access and the rationale for any proposed limitations such as protection of cultural (including tangible and intangible resources) or natural resources, or public health and safety concerns;

(5) An identification of persons and organizations that support the project and their specific role in acquiring the land and establishing and managing the community forest;

(6) If the project is within the designated boundary of a Federal management unit, a letter of support for the project from the Federal land manager; and

(7) A description of the resources that will be used to maintain and manage the property as a community forest in perpetuity.

(d) Information regarding the proposed land acquisition, including:

(1) A proposed project budget including a table and/or narrative detailing the source/type of non-Federal cost share and all allowable expenses associated with the project (§ 230.6);

(2) Requests for State Forester, or equivalent official of Indian Tribes, technical assistance in Community Forest Plan preparation should be listed separately in the budget, along with their estimated costs of providing assistance (§ 230.10);

(3) The status of due diligence, as documented by a signed option or purchase and sale agreement, title search, minerals determination, and appraisal;

(4) Description and status of cost share (secure, pending, commitment letter, etc.) (§ 230.6);

(5) The status of negotiations with participating landowner(s) including purchase options, contracts, and other terms and conditions of sale;

(6) The proposed timeline for completing the acquisition and establishing the community forest; and

(7) Long term management costs and funding source(s).

(e) Applications must comply with the Uniform Federal Assistance Regulations (7 CFR part 3015).

§ 230.5 Ranking criteria and proposal selection.

The Forest Service will evaluate all applications received by the State Foresters or equivalent officials of the Indian Tribes and award grants based on the following criteria:

(a) Type and extent of community benefits provided (§ 230.2);

(b) Extent and nature of community engagement in the establishment and long-term management of the community forest;

(c) Extent to which the community forest contributes to a landscape conservation initiative;

(d) Likelihood that, unprotected, the property would be converted to nonforest uses;

(e) Amount of cost share leveraged;

(f) Extent of due diligence completed on the project, including cost share committed and status of appraisal;

(g) Costs to the Federal Government; and

(h) Additional considerations as may be outlined in the RFA.

§ 230.6 Project costs and cost share requirements.

(a) The Community Forest Program Federal contribution cannot exceed 50 percent of the total project costs.

(b) Allowable project and cost share costs will include the purchase price and the following transactional costs associated with the acquisition:

(1) Appraisals and appraisal reviews;

(2) Land surveys;

(3) Legal and closing costs;

(4) Development of the Community Forest Plan; and

(5) Title examination.

(c) The principles and procedures for determining allowable costs for grants are outlined in 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements.

(d) Project costs do not include the following:

(1) Long-term operations, maintenance, and management of the land;

(2) Construction of buildings or recreational facilities;

(3) Research;

(4) Existing liens or taxes owed; and

(5) Costs associated with preparation of the application, except any allowable project costs specified in paragraph (b) of this section completed as part of the application.

(e) Cost share contributions can include cash, in-kind services, or donations and must:

(1) Be supported by grant regulations described in paragraphs (a) through (d) of this section;

(2) Not include other Federal funds unless specifically authorized by Federal statute;

(3) Not include non-Federal funds used as cost share for other Federal programs;

(4) Not include funds used to satisfy mandatory or compensatory mitigation requirements under a Federal regulation, such as the Clean Water Act, the River and Harbor Act, or the Endangered Species Act;

(5) Not include borrowed funds, as defined in §230.2; and

(6) Be accomplished within the grant period.

(f) Cost share contributions may include the purchase or donation of other lands located within the community forest as long as it is provided by an eligible entity and legally dedicated to perpetual land conservation consistent with Community Forest Program and community forest objectives; such donations need to meet the acquisition requirements specified under § 230.8(a)(1)(ii).

(g) For purposes of calculating the cost share contribution, the grant recipient may request inclusion of project due diligence costs, such as title review and appraisals, incurred prior to issuance of the grant. These pre-award costs may have been incurred up to one year prior to the issuance of the grant, but cannot include the purchase of Community Forest Program land, including cost share tracts.

§ 230.7 Grant requirements.

(a) Once an application is selected, funding will be obligated to the grant recipient through a grant.

(1) The following grant forms and supporting materials must be completed after project selection in order to receive the grant:

(i) An Application for Federal Assistance (Standard Form 424);

(ii) Budget information (Standard Form 424c—Construction Programs);

(iii) Assurances of compliance with all applicable Federal laws, regulations, and policies (Standard Form 424d—Construction Programs); and

(iv) Additional forms, as may be required to award the grant.

(2) The grant paperwork must adhere to the requirements outlined in 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(b) The initial grant period will be two years, and acquisition of lands should occur within that timeframe. The grant may be reasonably extended by the Forest Service when necessary to accommodate unforeseen circumstances in the land acquisition process.

(c) Forest Service must approve any amendment to a proposal or request to reallocate funding within a grant proposal.

(d) The grant recipient must comply with the requirements in § 230.8(a) before funds will be released.

(e) After the grant has closed, grant recipients must provide the Forest Service with a Geographic Information System (GIS) shapefile: a digital, vector-based storage format for storing geometric location and associated attribute information, of Community Forest Program project tracts and cost share tracts, if applicable.

(f) Any funds not expended within the grant period must be de-obligated and revert to the Forest Service for redistribution.

(g) All media, press, signage, and other documents discussing the creation of the community forest must reference the partnership and financial assistance by the Forest Service through the Community Forest Program.

§ 230.8 Acquisition requirements.

(a) Prior to closing on an acquisition, grant recipients participating in the Community Forest Program must complete the following, which applies to all tracts, including cost share tracts:

(1) Complete an appraisal:

(i) For lands purchased with Community Forest Program funds, the appraisal must comply with Federal appraisal standards prior to the release of the grant funds. The grant recipient must provide documentation that the appraisal and associated appraisal review were conducted in a manner consistent with the Federal appraisal standards.

(ii) For donated cost share tracts, the market value must be determined by an independent appraiser. The value needs to be documented by a responsible official of the party to which the property is donated.

(2) Notify the landowner in writing of the appraised value of the property and that the sale is voluntary. If the grant recipient has a voluntary option for less than appraised value, they do not have to renegotiate the agreement.

(3) Purchase all surface and subsurface mineral rights whenever possible. However, if severed mineral rights cannot be obtained, the grant recipient must follow the retention of qualified mineral interest requirements outlined in the Internal Revenue Service regulations (26 CFR 1.170A-14 (g)(4)), which address both surface and subsurface minerals.

(4) Ensure that title to lands acquired conforms to title standards applicable to State land acquisitions where the land is located:

(i) Title to lands acquired using Community Forest Program funds must not be subject to encumbrances or agreements of any kind that would be contrary to the purpose of the Community Forest Program.

(ii) Title insurance must not be a substitute for acceptable title.

(5) The grant recipient must provide all necessary due diligence documentation to regional Forest Service program managers and allow at least 60 days for review and acceptance.

(b) At closing, record a Notice of Grant Requirement with the deed in the lands record of the local county or municipality. This document must:

(1) State that the property (including cost share tracts) was purchased with Community Forest Program funds;

(2) Provide a legal description;

(3) Identify the name and address of the grant recipient who is the authorized title holder;

(4) State the purpose of the Community Forest Program;

(5) Reference the Grant Agreement with the Forest Service (title and agreement number) and the address where it is kept on file;

(6) State that the grant recipient confirms its obligation to manage the interest in real property pursuant to the grant, the Community Forest Plan, and the purpose of the Community Forest Program;

(7) State that the community forest may not be sold and will not be conveyed or transferred to another eligible entity or encumbered in whole or in part, to another party without permission and instructions from the Forest Service; and

(8) State that the grant recipient will manage the interest in real property consistent with the purpose of the Community Forest Program.

§ 230.9 Ownership and use requirements.

(a) Grant recipients shall submit a final Community Forest Plan for Forest Service review within 120 days of the land acquisition and update the plan periodically to guide the management and use of the community forest.

(b) Grantees are encouraged to work with their State Forester or equivalent official of their Indian Tribe for technical assistance when developing or updating the Community Forest Plan. In addition, eligible entities are encouraged to work with technical specialists such as professional foresters, recreation specialists, wildlife biologists, and outdoor education specialists when developing Community Forest Plans.

(c) Grant recipients shall provide public access in accordance with the Community Forest Plan.

(d) Recipients must manage the property in a manner consistent with the purposes of the Community Forest Program. In the event that a grant recipient sells or converts a parcel of land acquired under the Community Forest Program to nonforest uses or any use inconsistent with the purposes of the Community Forest Program, the grant recipient shall:

(1) Pay the United States an amount equal to the current sale price or the current appraised value of the parcel, whichever is greater. For the purposes of the calculation in this paragraph (d)(1), the parcel's appraised value will be the parcel's full fair market value. The impact of subsequent encumbrances, such as the imposition of conservation easements consistent with the purposes of the Community Forest Program, will not be considered in appraising the parcel's fair market value; and

(2) Not be eligible for additional grants under the Community Forest Program.

(e) For Indian Tribes, land acquired using a grant provided under the Community Forest Program must not be sold, converted to nonforest uses or a use inconsistent with the purpose of the Community Forest Program, or converted to land held in trust by the United States on behalf of any Indian Tribe.

(f) Every five years, grant recipients shall submit a self-certifying statement to the regional Forest Service Program Manager confirming that the property has not been sold or converted to nonforest uses or a use inconsistent with the purpose of the Community Forest Program.

(g) Grant recipients are subject to periodic spot checks conducted by the Forest Service to verify that property acquired under the Community Forest Program has not been sold or converted to nonforest uses or any use inconsistent with the purpose of the Community Forest Program and that the current Community Forest Plan complies with defined minimum requirements in §230.2.

§ 230.10 Technical assistance funds.

Community Forest Program technical assistance funds may be provided to State Foresters or equivalent officials of Indian Tribes through an administrative grant to help implement projects funded through the Community Forest Program. These funds do not have a cost share requirement. Section 7A (f) of the authorizing statute limits the funds allocated to State Foresters or equivalent officials of Indian Tribes for program administration and technical assistance to no more than 10% of all funds made available to carry out the program for each fiscal year. Funds will only be provided to States or Indian Tribes that:

(a) Have a Community Forest Program project funded within their jurisdiction; and

(b) Indicate the financial need and purpose of technical assistance in their Community Forest Program application.

Dated: March 29, 2021.

Chris French,
Acting Deputy Under Secretary,
Natural Resources and Environment.

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